IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODGING) NO.348 OF 2006

In

SUMMONS FOR JUDGEMENT NO.610 OF 2004

In

SUMMARY SUIT NO.1013 OF 2004

Ashwin Deshraj Monga : Appellant
(Orig. Defendant)

V/s.

Lalit Sharma : Respondent
(Orig. Plaintiff)

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Mr.Niranjan Laposia i/b. M/s.Niranjan & Co., for the appellant.

Mr.D.A.Athavale for the respondent.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : SEPTEMBER 4, 2006.

P.C.

1. Heard Mr.Niranjan Laposia, the counsel for the appellant and Mr.D.A.Athavale, the counsel for the respondent.

2. The original agreement dated 22.12.1999 was placed

before us by the counsel for the respondent for our perusal.

3. The material part of the agreement reads thus:-

> 1. The Vendor hereby confirms each and every of the above recitals as true and correct and incorporates the same herein as if the same were specifically set out herein.
>
> 2. The Vendor further confirms having received from the Purchaser the sum of Rs.12,00,000/- (Rupees Twelve Lacs Only) towards the part purchase price as recited hereinabove.
>
> 3. At the request of the Vendor, the Purchaser has agreed to cancel the abovementioned Agreement subject to the Vendor refunding to the Purchaser the said amount of Rs.12,00,000/- and interest within a period of two years from the date of execution of these presents. The Vendor hereby agrees and undertakes to refund to the Purchaser the aforesaid amount within two years from the date of execution of these presents in the manner stated hereinabove in the recitals, the time being essence of the Agreement. The Purchaser confirms that on receipt of the full amount with interest the Purchaser will not have any right, title, interest or claim of whatsoever nature in respect of the said Stall and the said License and the running business."

4. In the light of the said agreement, the contention of the counsel for the appellant that the appellant did not receive the amount or that the respondent was put in possession, pursuant to the Agreement for Sale, has no substance. The agreement, as noticed above, is

unambiguous and clear. The defence set up by the appellant in opposing the Summons for Judgement is no defence. As a matter of fact, the learned trial Judge showed mercy by permitting the appellant to defend the suit on depositing a sum of Rs.10 lakhs, though he has no plausible defence to defend the summary suit, and, no case was made out for leave to defend.

5. No interference is called for in the impugned order.

6. Appeal is dismissed in limine.

R.M. LODHA, J.

S.A. BOBDE, J.